



Association of Financial Advisers Ltd  
ACN: 008 619 921  
ABN: 29 008 619 921  
PO Box Q279  
Queen Victoria Building NSW 1230  
T 02 9267 4003 F 02 9267 5003  
Member Freecall: 1800 656 009  
[www.afa.asn.au](http://www.afa.asn.au)

9 August 2019

Jacqueline Rush  
Senior Policy Adviser  
Australian Securities and Investments Commission (ASIC)  
GPO Box 9827  
Melbourne VIC 3001

By email: [IDRsubmissions@asic.gov.au](mailto:IDRsubmissions@asic.gov.au)

Dear Ms Rush

### **AFA Submission – CP 311 Internal Dispute Resolution: Update to RG 165**

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are currently practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting their wealth.

#### **Introduction**

The AFA welcome the opportunity to make a submission in response to this consultation.

It is important to make the point that RG 165 will apply to all AFSLs and all complaints. This includes very large institutions who have dedicated complaints teams, but also small self-licensed financial advice practices, where the individual adviser needs to deal with all complaints. It also applies equally to complaints about simple administrative issues and complex matters such as the appropriateness of financial advice. It applies to provider – client relationships that are system based and it applies to provider – client relationships that are face to face, frequent and in-depth. We are concerned that the proposals in this consultation paper do not give adequate consideration to the range of situations where it may apply, and we are also particularly concerned that they will cause

much greater change and complication for small financial advice practices. We will address this in greater detail below.

### Response to Questions raised in the Consultation Paper

**Question 1:** B1Q1. Do you consider that complaints made through social media channels should be dealt with under IDR processes? If no, please provide reasons. Financial firms should explain:  
(a) how you currently deal with complaints made through social media channels; and  
(b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm’s own social media platform or an external platform.

Whilst acknowledging the change in the definition of a complaint in AS/NZS 10002:2014, we do not believe that this should necessarily mandate the need to formally include social media complaints.

As we have discussed above, this proposal might be more manageable for a large institution that has a dedicated complaints team and people who are devoted to monitoring social media activity. It is very different for a small business financial advice firm (AFSL) who have social media accounts, but don’t use them actively.

We are very conscious that some matters raised on social media may be more specific and actionable. Others may be more general criticisms of an industry, entity, an adviser or a product. Many of these types of complaints may come from people who are not even clients. In some cases, it may be very difficult to identify or contact the person making the complaint. The ability for members of the public to make multiple vexatious claims via social media, which would then have to be dealt with via the IDR process, could virtually paralyze a small business as it attempts to deal with these complaints. We certainly believe that AFSL’s need to take on board feedback that they get via social media and that where something is specific, they must seek to action the matter, through obtaining specific details through another more private forum. We do not think that it is appropriate to manage a complaint via a social media platform.

We are also very conscious that financial advisers who are employed or authorised by a licensee, may operate their own social media accounts that they interact with clients on. Would such social media accounts be covered in this proposal? We expect that it would result in confusion for clients if complaints made on social media platforms for AFSL’s are treated as formal complaints, however complaints made on social media accounts for financial advisers were not.

We recommend that the formal treatment of complaints on social media platforms be a matter of choice that AFSL’s can elect to opt-in for and detail in their Financial Services Guides. This would mean that entities that are set up to treat social media complaints in this way can and those who are not, can rely on the existing pathways for complaints.

**Question 2:** B2Q1. Do you consider that the guidance in draft updated RG 165 on the definition of ‘complaint’ will assist financial firms to accurately identify complaints?

We are broadly supportive of the additional guidance included in RG 165.32 to RG 165.37, although noting our comments above with respect to social media. We acknowledge that the treatment of a complaint should not depend upon who received it. We also note the point about verbal complaints, however it is important to recognise that with some complaints that relate to complex matters such as the appropriateness of advice, it will be very difficult for an AFSL to action the complaint in the absence of receiving evidence in support of the complaint.

**B2Q2** Is any additional guidance required about the definition of ‘complaint’? If yes, please provide:

- (a) details of any issues that require clarification; and
- (b) any other examples of ‘what is’ or ‘what is not’ a complaint that should be included in draft updated RG 165.

As discussed above, we think that more guidance is required with respect to the treatment of verbal complaints on matters that are complex and cannot be adequately investigated in the absence of the provision of further evidence.

**Question 3:** B3Q1. Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact.

We do not oppose the change in the definition of a small business, noting that it makes good sense to have an alignment between the IDR requirements and the AFCA rules. It would not make sense for a matter to be excluded from IDR, if it could be included in the EDR process.

**Question 4:** B4Q1. Do you agree that firms should record all complaints that they receive? If not, please provide reasons.

This might sound like a reasonable suggestion for a non face-to-face transactional relationship, however the practicality of this needs to be considered in the context of a financial adviser undertaking an annual client review, where there is broad discussion of the performance of investments and any issues with respect to the services that were provided during the course of the year. This conversation could cover issues such as a phone call that was not returned until the next day. Some disappointment with respect to the investment performance of one or two investment options. Questions about delays in the implementation of insurance. Concerns about how the fees have been calculated. An adviser would need to stop after each issue was raised to then assess whether it was in fact a complaint and needed to be added to the register. This would impact the flow of such a meeting and lead to a worse outcome for the client and a greater cost to serve.

We acknowledge the benefit of data gathering in the collection of this extra information on complaints that are resolved immediately for a larger organisations, however we feel that this would be much less relevant for small businesses.

We do not support the inclusion of minor matters in a complaints register that could be addressed on the spot and highlight the significant difficulty that this would pose for financial advisers who have more regular and detailed discussions with their clients.

**Question 5:** B5Q1. Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.

Subject to our point above with respect to complaints that are addressed immediately, we are supportive of the use of unique identifiers. We do believe that it is important to make note of the fact that this may be more complicated for larger advice licensees, where we believe that there may need to be further guidance and potentially flexibility to establish the unique identifier at the Corporate Authorised Representative level.

**Question 6:** B5Q2. Do you consider that the data set proposed in the data dictionary is appropriate? In particular:

- (a) Do the data elements for ‘products and services line, category and type’ cover all the products and services that your financial firm offers?
- (b) Do the proposed codes for ‘complaint issue’ and ‘financial compensation’ provide adequate detail?

We note the very extensive data reporting requirements, which will add to the cost of operating this process. We appreciate that the AFCA Act in Section 912A(2A) allows ASIC, via a legislative instrument to require AFSL's to provide information to ASIC on complaints. We did not appreciate that this would be reporting of complaints at the individual complaint level and to the same extensive level of detail that has been proposed in the updated RG 165. We question whether this was the intent of the actual legislation, which we assumed would be more with respect to reporting at the aggregate level.

With respect to Table 3, Number 11, we would suggest that there should be provision for complaints from a couple, which makes answering the question on gender difficult.

**Question 7:** B6Q1. Do you agree with our proposed requirements for IDR data reporting? In particular:

- (a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?
- (b) Is the proposed maximum size of 25 MB for the CSV files adequate?
- (c) When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?

As mentioned above, we feel that the data requirements are very extensive and question whether this level of detail is actually necessary for reporting to ASIC.

We would also recommend that IDR data reporting to ASIC should be annual rather than every six months.

There will be many small licensees who have no complaints to report. We would recommend that there is a simple nil report option available.

We are not concerned about the proposed maximum size for the CSV file, as this is not likely to pose an issue for any financial advice licensee.

For complaints that have not changed in status between reporting periods, which would most likely be due to them being with AFCA, then it is reasonable for them to be left on the report. This might also be the case if the complaint is on hold awaiting information from the client and they are on extended leave or have requested the matter be put on hold.

**Question 8:** B7Q1. What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?

We would support the publication of IDR data at a high level for each licensee, setting out the number of complaints received, the number that were accepted and the number that were declined. For larger organisations, this might be split into different complaint and product types.

**Question 9:** B8Q1. Do you agree with our minimum content requirements for IDR responses? If not, why not?

We support the proposed minimum content requirements for IDR responses.

**Question 10:** B9Q1. Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons.

We have no comment with respect to this question.

**Question 11:** B10Q1. Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary.

We do not propose any additional reporting requirement for superannuation trustees.

**Question 12:** B11Q1. Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide:

- (a) reasons and any proposals for alternative maximum IDR timeframes; and
- (b) if you are a financial firm, data about your firm’s current complaint resolution timeframes by product line.

We support the alignment of the maximum complaint timeframe for superannuation complaints with the maximum timeframe for financial firms. We do not support the reduction in the maximum timeframe for financial firms from 45 days to 30 days. As we have stated above, this standard will apply to all entities and all types of complaints. A 30 day timeframe may be reasonable for an entity with simple complaints, where the response is easily prepared. In looking at this proposal, consideration needs to be given to complex complaints involving multiple parties. With financial advice, there are additional parties, with both the adviser and the licensee as stakeholders in the process. There are many complex financial advice complaints that involve a range of issues, where input needs to be obtained from a range of sources. Often the licensee needs to go back to the client to request additional information. 30 days will be entirely impractical in many cases.

We strongly oppose any reduction in the maximum timeframe for financial advice complaints. This will lead to rushed decisions that may not be the right decisions. Ultimately in these cases there is a greater risk of decisions being made that will not fairly treat one party to the complaint.

With respect to the suggestion that delay notifications can only be issued in exceptional circumstances, we believe that it is appropriate to explain what is meant by exceptional circumstances. We think that the proposal to reduce the maximum timeframe and limit the option of issuing a delay notification is unreasonable. Once again, we highlight the required timeframe to deal with complex financial advice matters, where multiple parties may be involved, and it is necessary to go back to the client for additional information. What has been proposed would require licensees to increase their complaints resources and this is just one more additional cost that would need to be passed on to clients.

**Question 13:** B11Q2. We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?

As stated above, we support the standardisation of the maximum complaint timeframe, however we recommend that this should be 45 days, and not 30 days.

**Question 14:** B12Q1. Do you agree with our approach to the treatment of customer advocates under RG 165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR.

We agree with what has been proposed with respect to customer advocates.

**Question 15:** B12Q2. Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.

We agree that any application of a customer advocate model should still require full compliance with RG 165.

**Question 16:** B13Q1. Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.

We support the need for a diligent approach to the consideration of systemic issues, however we also make the point that the requirements appear more tailored to a large entity. For a small entity such as a self-licensed financial advice practice, this could be built into standard practices, without the need to introduce excessive bureaucracy. RG 165 should make reference to consideration being given to the size of the entity in the design of the mechanisms to address systemic issues.

**Question 17:** B14Q1. Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.

Whilst we support the updating of RG 165 to reflect AS/NZS 10002:2014, we are conscious that this does not fully reflect the range of different sized entities that this applies to. This is clearly demonstrated by requirements like accessibility in RG165.147, which is simply excessive for small firms, particularly if they have no clients who might fit into the categories that have been mentioned. Equally, why would it be necessary for a small Sydney based practice, with Sydney based clients to have a toll-free or local call telephone number. There needs to be greater awareness of the cost impact of some of these requirements, as will apply to small businesses.

**Question 18:** B15Q1. Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods.

Our response to this question is framed by the fact that we do not agree to the reduction in the maximum timeframe or the inclusion of all immediately resolved complaints in the register. In the context that we do not support the inclusion of all immediately resolved complaints in the register, this also impacts our views on recording prescribed data for all complaints. Ultimately, it is our view that all significant regulatory changes should have a 12-month transition period. Given that the proposed release of the new version of the Regulatory Guide and the new Legislative Instrument is not until December 2019, we do not think that sufficient time has been made available for transition and implementation. A three-month transition for moving to a 30 day maximum timeframe would be totally unreasonable.

**Question 19:** B15Q1. Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.

As stated above we support a model of 12 months notice for the implementation of major regulatory changes.

### Concluding Remarks

The AFA represents small business financial advice practices. We are particularly concerned that this consultation paper and the updated Regulatory Guide does not sufficiently take into account the very different dynamics present in small businesses. What has been proposed will unnecessarily add complexity and cost to financial advice businesses. We strongly oppose a reduction to 30 days for the maximum timeframe to resolve complaints and the proposal that even matters that are immediately resolved would need to be recorded in a complaints register.

The AFA welcomes further consultation with ASIC should clarification of anything in this submission be required. Please contact us on 02 9267 4003.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Kewin'.

**Philip Kewin**  
Chief Executive Officer  
Association of Financial Advisers Ltd

8 October 2019

Jacqueline Rush  
Senior Policy Adviser  
Australian Securities and Investments Commission (ASIC)  
GPO Box 9827  
Melbourne VIC 3001

By email: [IDRsubmissions@asic.gov.au](mailto:IDRsubmissions@asic.gov.au)

Dear Ms Rush,

**AFA Additional Submission – CP 311 Internal Dispute Resolution: Update to RG 165**

Thank you for holding the roundtable on 20 September 2019 to discuss ASIC’s proposed changes to the Internal Dispute Resolution regime. During that meeting we made the point that the financial advice sector could not support a reduction in the maximum time to resolve internal complaints. We were asked to provide information on response times for financial advice complaints.

**Feedback from the Financial Advice Sector**

In order to respond to this request, we approached a number of our licensee partners seeking feedback on their experience with complaints and seeking a breakdown of response times by different durations. We received responses from a number of groups, including a detailed analysis from 5 groups. Each of these groups were of material scale and each had roughly similar patterns of complaint response time distribution. Please see below the consolidated table for the responses that we received:

	Number of Complaints				
	Less than 30 days	30 days to 34 days	35 days to 45 days	More than 45 days	Total
<b>5 Major Licensee groups</b>					
<b>Total</b>	56	33	504	73	666
<b>Percentage</b>	8.4%	5.0%	75.7%	11.0%	100.0%

We firmly believe that the table above supports the statements that we made at the roundtable, that financial advice, as a sector, with largely an authorised representative business model and a predominance of complex complaints, could not meet ASIC’s expectations for a reduction in the maximum timeframe from 45 days to 30 days. As you can see from the table above, less than 10% of financial advice complaints are dealt with in less than 30 days. This is a very significant sample of complaints, and we have every reason to believe that this would be reflective of the broader adviser and licensee population.



## Key Messages on Drivers of Complaint Duration

The feedback that we received from the licensees, who responded to our inquiries, included the following key points:

- Complaints with respect to fees or non-delivery of services can be dealt with much more quickly than complaints related to the quality of financial advice.
- Complaints related to the quality of financial advice, particularly where it relates to complex or multiple products, or an extended timeframe, requires a very detailed analysis of the client file and their relevant personal circumstances. Time is required to undertake this analysis, particularly where there is no dedicated complaints team.
- With complex complaints, it is much more likely that additional information needs to be requested from either the client, third parties (i.e. product providers) or external experts.
- With an authorised representative business model, the licensee will need to collect information from the adviser. They are also potentially required to engage with the Professional Indemnity insurer who may then appoint a lawyer to assess the matter. Each of these steps takes time, particularly where there is a lot of consultation required.
- With complex financial advice complaints, where a decision is made to compensate the client, often this can involve complex calculations to assess what the client outcome might have been in the absence of inappropriate advice.

A detailed consideration of the nature of financial advice complaints highlights the fact that they do take longer, and often much longer, than some of the other complaints experienced by non advice AFSLs.

## Other Key Feedback on CP311

We would like to take this opportunity to repeat our key messages in our previous submission and our verbal feedback at the Roundtable:

- These changes will apply to all internal disputes and this includes straightforward complaints received by large entities with dedicated complaints teams and complex complaints received by small licensees without dedicated complaints resources. The new model needs to be achievable for all licensees.
- We do not support a requirement to treat complaints or feedback posted on social media as a formal complaint.
- We do not support the requirement to treat all expressions of dissatisfaction as a complaint, including anything that is resolved either immediately or in the first five days. This would have serious implications for the management of face to face discussions with clients, including where each complaint needs to be registered and reported to ASIC.
- The level of administrative complexity needs to cater for the size of the entity. The accountability framework requirements may be appropriate for a large organisation, however will be excessive and costly for a small organisation.
- The changes proposed in CP 311 are significant and will likely have material implications, such as system and process changes and should not commence sooner than 12 months after finalisation.

## Concluding Remarks

We believe that the information that we have presented in the table above highlights the very different nature of financial advice complaints and why a reduction in the maximum timeframe from 45 days to 30 days is simply not practical for the financial advice sector. We strongly recommend that the maximum timeframe for IDR complaints remains at 45 days. We also repeat our concern that some of these changes proposed in CP 311 are likely to require additional resources to be

appointed within financial advice licensees and practices and that this would ultimately need to be passed on to clients, by way of increased fees.

The AFA welcomes further consultation with ASIC, should clarification of anything in this submission be required. Please contact us on 02 9267 4003.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Kewin', written in a cursive style.

**Philip Kewin**  
Chief Executive Officer  
Association of Financial Advisers Ltd